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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,786	07/16/2003	Louis Danoux	C 2706 COGG	1110
23657	7590	11/02/2004	EXAMINER COE, SUSAN D	
COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			ART UNIT 1654	PAPER NUMBER

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/620,786

**Applicant(s)**

DANOUX ET AL.

**Examiner**

Susan D. Coe

**Art Unit**

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/03; 2/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. Claims 1-7 are currently pending.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 2-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to “use” claims. “Use” claims are not a statutory category of invention.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 is indefinite because it states that it is drawn to a process for the production of a preparation; however, the claim does not set forth any process steps used to produce the preparation. Thus, the claim is not a proper process.
4. As discussed above, claims 2-6 are directed to “use” claims. This is a non-statutory category of invention; thus, it is unclear what applicant is intending to claim, i.e. a composition

or a method of using a composition. For the purpose of examination, these claims are considered to be composition claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,571,503.

Applicant's claims are drawn to a composition that contains at least one substance that is able to increase the synthesis of energy donors or the mitochondrial respiratory chain and is able to lower the level of reactive oxygen species in the skin. Applicant specifically claims a composition of vitamin C, yeast, and glycogen that is able to accomplish the effects claimed.

US '503 teaches a cosmetic composition that contains yeast, glycogen, and vitamin C esters. In addition, the reference contains numerous plant extracts (see abstract and claims).

The reference does not specifically teach that the composition has the ability to increase the synthesis of energy donors or the mitochondrial respiratory chain and it able to lower the level of reactive oxygen species in the skin. However, the reference teaches applying the same composition as claimed to the same substrate, i.e. human skin. Thus, since the same composition is applied to the same substrate, any effects claimed by applicant would inherently have to occur

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in the prior art method. If these effects do not occur, then applicant's invention would not function as claimed.

6. Claims 1-5 and 7 rejected under 35 U.S.C. 102(b) as being anticipated by Wilkinson et al. eds (Harry's Cosmeticology, 7<sup>th</sup> ed. (1982), Chemical Publishing: New York, pp. 61, 63, and 76).

Wilkinson teaches how to formulate cosmetic compositions. The reference teaches that vitamin C, vitamin A, vitamin E and amino acids are common ingredients in cosmetics. The amino acids are found in plants (see pages 61 and 63). In addition, the reference teaches using zinc sulfate in skin compositions (see page 76).

In addition, the reference does not specifically teach that the vitamins, zinc and amino acid containing compositions have the same effects as claimed by applicant. However, on pages 4 and 5 of applicant's specification, vitamins C, A, and E, zinc sulfate and amino acids are described as ingredients that carry out the effects claimed when applied to skin. Thus, the reference compositions would inherently have the same effects as claimed.

7. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,372,237.

US '237 teaches cosmetics that contain tocopherols and chlorogenic acid (see claims). Both of these ingredients can be extracted from plants. The reference also teaches the use of EDTA in cosmetic compositions (see column 17).

In addition, the reference does not specifically teach that the compositions have the same effects as claimed by applicant. However, on pages 4 and 5 of applicant's specification, tocopherols, EDTA and chlorogenic acid are described as ingredients that carry out the effects

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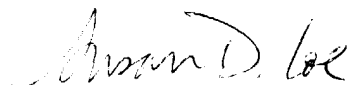
claimed when applied to skin. Thus, the reference compositions would inherently have the same effects as claimed.

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

  
Susan D. Coe, Examiner  
October 29, 2004